

POLITICAL AND LEGAL SYSTEM OF THE REPUBLIC OF SRPSKA

Dragan Golijan¹, Jelena Golijan²

¹Faculty of Business Studies and Law, University "Union-Nikola Tesla", Belgrade, Serbia, e-mail: dragan.golijan@fbsp.edu.rs

²Faculty of Business Studies and Law, University "Union-Nikola Tesla", Belgrade, Serbia

Abstract: *The break-up of Yugoslavia formed new state entities, and therefore also the Republic of Srpska, with the separating of the Serbian deputies from the composition of the Assembly of Bosnia and Herzegovina. With the adoption of the Constitution, in 1992, began to function Republic of Srpska and it was confirmed by the Dayton Agreement, but within Bosnia and Herzegovina. It retained the system of separation of powers and state-bodies which had: the National Assembly, the President, the government, the judicial system. It elects into the authorities of BiH state its representatives. The Constitution of Republika of Srpska had its amendments in which the Council of the nations was established (for the protection of vital 'interests) and other organizations legal-political system is retained since the adoption of the Constitution up to date.*

Keywords: *Republic of Srpska, the National Assembly, the Government, municipalities, Bosnia and Herzegovina, president, division of power.*

1. INTRODUCTION

The authorities in the Republic of Srpska is based on the principle of separation of powers. It is legal, organized and institutionalized, because only an organized system of government can realize the application of power and the application of sanctions. State power in the Republic of Srpska is complete, refers to total human activity and existence. The authority in the Republic of Srpska is legal, because it is public and legally elected, and works within the framework of competencies established by the Constitution and law. It is legitimate because it is accepted by members of the Republic of Srpska (Golijan, 2000, p. 16). Also in the system of government of the Republic of Srpska there is rule of law, which is manifested, as we men-

tioned, through legitimacy and legality of the division of power and the independence of the judiciary, the constitutional guarantee of human rights and freedom of economic activity. (Mikeš, 2008, p.75) The construction of the legal system is closely related to the construction of the state as a community. In the method of creating the law and the legal system we must distinguish between certain values, which are: social order, legal order and the legal system, which is characteristic for the Republic of Srpska. In its twenty five years of existence and development, RS has developed a legal, democratic and pro-European country. There was built a stable legal system with separation of powers (the National Assembly, the President, the government and the judicial system). National Assembly as a lawmaker brought legal acts and over 1700 Laws and over 2500 decisions and countless other acts, all in accordance with the Constitution of the Republic of Srpska and BiH. Mutual relations and cooperation of the authorities as required by the constitution is respected and all the organs perform their functions.

2. THE EMERGENCE AND EXISTENCE OF THE REPUBLIC OF SRPSKA

The emergence of the Republic of Srpska is not hegemony but a real need for the survival of the Serbian people in the territory. When Izetbegovic demanded that the European Community recognized the sovereignty of BiH, and the other October events have caused to create the Republic of Srpska.(Gudac, Đorđević, 1996, p. 212) The Dayton Peace Agreement confirmed the two constitutions, two constitutional entities of Bosnia and Herzegovina (BiH Federation and the Republic of Srpska).(Imamović, 2006, p. 194)

The process of the constitution began in October 1991, and by the Dayton Agreement it is important to note that they adopted the following documents:

- The decision on the establishment of the Assembly of the Serbian People in Bosnia and Herzegovina (84 peoples deputies have made a decision on 24 October 1991.),
- The decision on remaining Serbian people of BiH in the common state of Yugoslavia (adopted on 24 October 1991, and confirmed by a plebiscite on the 9th and 10th of October, and with the wish that the Serbian people remain in the same state)
- Declaration on the proclamation of the Republic of Srpska People of BiH (based on universal, inalienable, non-transferable right to self-determination for the adoption of this decision created a new state Republic of Srpska of Bosnia and Herzegovina,
- Constitution of the Republic of Srpska of Bosnia and Herzegovina (adopted on 28 February 1992, confirmed the Republic of Srpska as an independent state and established all the important elements of the country, type of organization and governance, system of government organization, the rights and duties of citizens, and all authorities)
- Constitutional Law for the implementation of the Constitution (the same day as the Constitution was adopted and constitutional law that puts into operation the Constitution)
- Declaration on the state and political structure of the state (adopted on 12 August 1992, and has the character of a constitutional act or constitutional law. This declaration specifies the new name of the Republic of Srpska and state symbols: the anthem, flag and emblem, the state has declared itself the unique and sovereign, a

- form of government is a republic, etc.)
- Pored konstitutivnih akata koje je donosila Narodna skupština značajni su i međunarodni dokumenti: In addition to the constituent acts that were brought by the National Assembly there are also significant international documents:
 - a) Geneva Accord (adopted 08 September 1995, it declared that Bosnia and Herzegovina is
 - divided into two entities
 - that 49% belongs to the Republic of Srpska
 - that both entities can establish parallel relationships with other countries
 - retains its existence as an international entity
 - that both entities must take reciprocal obligations.
 - b) The New York Agreement (adopted on 26 September 1995, as a continuation of the Geneva Agreement, which stipulates:
 - that both entities shall respect the international obligations of BiH
 - that the government of entities shall support freedom of movement and rights of displaced persons
 - OSCE to appoint its own representatives in all major cities
 - to respect the rules of elections for parliament and the presidency of Bosnia and Herzegovina
 - to make appropriate government Ministers
 - that BiH will have a Constitutional Court
 - to continue further negotiations,
 - c) The Dayton Peace Accord (adopted on 21 November 1995 and confirmed on 14 December 1995, in Paris, with which there was adopted another 11 annexes, all documents, and especially the General Agreement and the Constitution of the important constitutive acts because they established the state legal status of the RS within BiH.) (Kuzmanović, 1998, p. 143). A new state organization was created in the territory of the former federal unit of BiH, and that is Bosnia and Herzegovina in which there is the entity of the Republic of Srpska.

3. THE ORGANIZATION OF THE POLITICAL SYSTEM IN RS

The Republic of Srpska, with its Constitution guarantees maximum protection of human rights and freedoms according to modern standards and respecting international agreements.

It has fully applied a system of separation of powers and the correlation of authorities. It has proved that it is able to function independently in the first phase of its existence, and then as a constituent unit provided by all standards.

Its stability and ability is based on three pillars, namely: power will of the people (expressed in the plebiscites and referendums), the power of the Constitution and the law, the force of the Dayton Peace Agreement.

Durability of the existence and survival of the Republic of Srpska is guaranteed by modern made law and order systems with durable and modern institutions: the National Assembly, the Government, the President, an independent judiciary, education system, health

care and all the other things you need for modern state and its citizens, while respecting the Constitution and Laws of Bosnia and Herzegovina as a state. (Kuzmanović, 2014, p. 161.)

The Constitution of the Republic of Srpska stipulates the government bodies as follows:

- **The National Assembly** will carry out constitutional and legislative power as the core business, with additional activities such as: budget, personnel, control. The National Assembly shall determine the territorial organization, announce a referendum, the loan grants, declare a state of emergency, select delegates to the House of Peoples of the Parliamentary Assembly, ratify international agreements and carry out other activities stipulated by the Constitution.

The National Assembly in its work takes care to protect the vital national interests of the constituent peoples.

The Constitution prescribes and defines the vital national interests as follows:

- exercise of the right of constituent peoples to be represented in government,
- identity of one constituent people,
- constitutional amendments,
- organization of public authorities
- equal rights in decision-making,
- territorial organization,
- public information,
- education, religion, language, culture and other issues.

For the purpose of enhanced protection of the vital interests through amendments of the Constitution there was imposed the formation of the National Council with its 28 delegates, and the National Assembly has 83 deputies. (Golijan, 2011, pp.115-121)

- **President of the Republic of Srpska** represents the Republic, and proposes candidates for the Prime Minister and at the proposal of the High Judicial and Prosecutorial Council he proposes to the Assembly candidates for judges of the Constitutional Court. He further promulgates laws adopted by the National Assembly, grants pardons and confers decorations and awards. He may convene a session of the Government, appoints members of the RS Senate, appoints the heads of missions of the Republic abroad, and carries out in accordance with the Constitution of the Republic and the Constitution of BiH certain tasks related to defense, security and relations of the Republic with other countries and international organizations.

- **The Government of the Republic of Srpska** is an executive body, it is composed of: President, Vice-Presidents and Ministers, of the total of ministers one-third of the members of the Government must be from the other two constituent peoples. The responsibility of Ministers is two-folded: to the Prime Minister and the National Assembly. During the mandate the Prime Minister may carry out changes in the composition of the Government with the consent of the President of the Republic and President of the Republic of Srpska National Assembly which shall inform the Assembly. The government has jurisdiction of classical collegial body of executive power in the country. (Blagojević, 2002, p.117)

Government implements the following constitutional jurisdiction:

proposes to the National Assembly laws and other regulations, proposes development plan, urban plan, budget and final accounts, provides implementation and enforces laws and other regulations, gives opinion on draft laws and regulations submitted by other proposers, establishes principles for the internal organization of ministries and other bodies and

organizations and coordinates their work and supervises and exercises such other powers as prescribed by Law on the government.

-**The Constitutional Court** shall monitor the events of interest to the Constitution and laws, shall inform the highest authorities of the Republic about the situation and problems in the area and give opinions and proposals for the adoption of the Act and take other measures in order to ensure the constitutionality and legality and protection of the rights and freedoms of citizens, organizations and communities. The Court has nine members, and the council for the protection of vital interest has seven members, two from each constitutional nation and one member from among the others. Judges are selected by the National Assembly. Proceedings before the Constitutional Court can be initiated by everyone, without restrictions may be initiated by the President of the Republic, the National Assembly and the Government and other authorities under the conditions provided by law. The Constitutional Court may also initiate the procedure for assessing the constitutionality and legality. When the court finds that the Act is inconsistent with the Constitution Act, the Law ceases to be valid on the day of publication of the court decision, because the decisions are final, binding and enforceable in the territory of RS.

Jurisdiction of the court are as follows:

- decide on the compliance of laws and regulations with the constitution,
- decide conformity of regulations with the Law,
- resolve conflicts of competence between legislative, executive and judicial authorities,
- resolve the conflicts of jurisdiction between the Republic, towns and municipalities, the conformity of programs, statutes and other acts of political organizations with the Constitution and the Law.

The characteristic of the political-legal system of the Republic of Srpska is that they are mostly copied from the constitutional system solutions in Serbia, and other characteristics is that the bodies are independent of each other or mutually connected and in constant collaboration.

President of the Republic proposes candidates for the Prime Minister, the Assembly elects the Prime Minister and ministers. Government and its members are responsible to the National Assembly, but it can censure the Government, the Government may raise the issue of confidence in the National Assembly. (Golijan, 2004, pp. 149-151)

The government prepares draft laws and gives opinions on draft laws submitted by other proponents. National Assembly after the enactment of the Act shall submit to the President of the Republic who should sign it within seven days or return it to the Assembly to decide again. President of the Republic proposes to the National Assembly candidates for the president and judges of the Constitutional Court on the proposal by VSSTS.

4. CONCLUSION

In a very difficult economic and political conditions in the Balkans and in the world Republic of Srpska is constitutionally and legally but also politically and economically stable. It is committed to the Dayton Agreement, the BiH Constitution and the Constitution of the Republic of Srpska.

The road, development and survival of RS is supported by the citizens and institutions. Republic of Srpska was created by the will of the nation and national and international law.

It was created before the war, in the war it was preserved and defended and at the end it is internationally recognized.

Good cooperation between the highest authorities of the Republic of Srpska and loyalty of citizens to these authorities, as well as respect for the Constitution and the law guarantee sustainability and successful development in all areas of life.

REFERENCES

- [1] Blagojević, Milan, *Pravna priroda i položaj Brčko-distrikta u BiH*, Grafičar, Doboj, 2002.
- [2] Golijan, Dragan, *Narodna skupština Republike Srpske*, Alegraf, Loznica, 2000.
- [3] Golijan, Dragan, *Politička predstavništva balkanskih zemalja*, Han Pijesak, 2004.
- [4] Golijan, Dragan, *zakonodavna vlast BiH*, NUBL, Banja Luka, 2011.
- [5] Gudac, Žarko i Đorđević, Miroslav, *Savremena politička istorija*, Zavod za udžbenike i nastavu sredstva, Beograd, 1996.
- [6] Imamović, Mustafa, *Osnove upravno političkog razvitka i državno pravnog položaja BiH*, Pravni fakultet, Sarajevo, 2006.
- [7] Kuzmanović, Rajko, *Eseji o ustavnosti i zakonitosti*, Formiranje RS, Pravni fakultet, Banja Luka, 1998.
- [8] Kuzmanović, Rajko, *Ustavno pravne teme, Ustavno pravna izradnja i funkcionisanje Republike Srpske* (Međunarodno-naučni skup, Akademija nauka RS, Banja Luka, 2014.
- [9] Mikeš, Miroslav *BiH i vladavina prava*, Atlantik, Banja Luka, 2008.